

# **EXHIBIT K**

**AFFIDAVIT OF SEAN TESORO**

**STATE OF ALABAMA )  
                        )  
JEFFERSON COUNTY   )**

Before me, a notary public in and for said state and county, personally appeared Sean Tesoro, after being first duly sworn, deposes and says as follows:

1. My name is Sean Tesoro. I am a resident of Alabama. I am currently employed as a Program Director in the Wealth Management division of Colonial Bank, N.A., and, in such capacity, file this affidavit in support of Colonial's motions for summary judgment regarding the lawsuits filed by Susan Guy and Kitty Graham.

2. I am authorized to make this affidavit and am competent to testify at trial regarding the statements made herein.

3. I am currently 34 years old and have been employed by Colonial since May 2004.

4. I obtained my B.A. in History from Yale University in May of 1994. Following my graduation from Yale, I was employed as a Regional Marketing Associate with Putnam Investments from 1994 to 1997. From 1997 through 1998, I served as Chief of Staff for economist Arthur Laffer, founder of Laffer Associates, an economic research and consulting firm that provides investment-research services to investment companies, financial institutions, and institutional asset managers. From 1999 through 2004 I worked as a regional sales manager for various investment companies, including Sun Life Financial (03/98-01/01), Allstate Financial Distributors (01/01-12/01), Travelers Financial Distributors, (01/02-11/02), and MassMutual Financial Group (12/02-04/04). In this capacity, I marketed and sold investment products to Broker Dealers and financial institutions and their registered representatives, including

insurance, fixed-rate annuities as well as NASD licensed products, e.g., mutual funds, 401(k)s and variable annuities.

5. I became familiar with Colonial Bank while employed by MassMutual in a regional sales position. MassMutual offered investment products to Colonial for resale to its customers, and I was responsible for the Colonial account. While working at MassMutual, I substantially increased the existing Colonial Bank account from approximately \$2.1 million in annual insurance company product sales to \$38 million in annual sales. I also trained Colonial's Financial Consultants and Licensed Agents in my territory with respect to the marketing and sale of investment products offered by MassMutual, including insurance, fixed-rate annuities and NASD licensed products such as mutual funds and variable annuities.

6. In May 2004, Colonial hired me as a Financial Consultant for the Auburn, Alabama territory. As a Financial Consultant, I was responsible for marketing and selling investment products through the five Colonial branch banks located in my sales territory. Those investments products included insurance, fixed-rate annuities and NASD licensed products such as stocks, bonds, mutual funds and variable annuities. I was also responsible for training the Licensed Bankers operating in my sales territory with respect to the sale of insurance and fixed-rate annuities.

7. At the time I was employed as a Financial Consultant, the Wealth Management division provided minimal sales training to Financial Consultants. Likewise, there was minimal training available to Colonial's Licensed Bankers. The training provided typically was conducted by a product vendor who was pitching the company's particular investment products. Although Kitty Graham provided some training to Licensed Bankers in my sales territory in her capacity as a Platform Annuity Agent Trainer, she provided limited training on actual sales

techniques or other techniques for identifying potential customers and developing customer relationships. Instead, she relied heavily on third-party vendors to provide training as to their particular insurance and fixed annuity products. With respect to the few training session Ms. Graham provided, the participation level of Licensed Bankers was minimal. In sum, prior to the comprehensive restructuring of the Wealth Management division in 2005 and 2006, Colonial lacked an effective sales training program for Financial Consultants and Licensed Bankers.

8. I also observed other systemic problems within Colonial's Wealth Management division. In particular, the existing organizational structure of the division impeded communication and cooperation among its different departments and, in particular, between Licensed Bankers, who sold fixed annuities and insurance products under the Family Insurance section, Financial Consultants who, operating under the Brokerage section, sold NASD licensed products, *e.g.*, stocks, bonds, mutual funds and variable annuities, and Insurance Specialist, who sold insurance (both fixed and NASD licensed Variable Insurance). Although part of the same division, the Annuity, Family Insurance and Brokerage sections essentially were operating independently of one another and often were competing directly for the same banking customer. Furthermore, there was little in the way of cooperative effort among the sections of the division and Colonial's retail and commercial banking partners. These and other problems, ultimately affected the productivity and profitability of the Wealth Management division.

9. In 2004, I was aware that Colonial had engaged the Huntington Investment Company to serve as an outside consultant to review the structure of the Wealth Management division and to provide advice and recommendations for improving performance and overall profitability of the division. Although I was not directly involved in the decisionmaking process, Huntington representatives interviewed me (as well as other employees in the Wealth

Management division) and solicited my input as to how the division could operate more efficiently and profitably and better meet the needs of the bank and its customers.

10. In November 2004, the Wealth Management division conducted a two-day meeting of all of the Financial Consultants, wherein they advised us that the division was significantly underperforming the industry average in virtually every important category of productivity. As a result of these problems, we were informed that Wealth Management would be adopting a series of goals and strategies designed to improve the division's partnership with the retail bank, with the ultimate goal of achieving investment company performance in the top quartile of the industry. I later became aware that the proposed goals would include a comprehensive restructuring of the division, including the elimination of some positions through consolidation as well as the creation of certain new positions.

11. In December 2005, Andy Rippy, Wealth Management's State Sales Director for Alabama, Georgia, Texas and Nevada, approached me and asked me whether I would be interested in becoming one of two new Regional Sales and Development Wholesalers. I advised him that I was not interested in that position. However, he later informed me that there was a different position for which I would be qualified. Wealth Management was creating a new Program Director position to coordinate the entire investment program, including training, products, marketing, and sales. I expressed my interest in the position and subsequently discussed it with Linda Green, the Executive Vice President of the Wealth Management division.

12. On or about January 24, 2005, I accepted the offer to become the Program Director for Wealth Management and was formally appointed to the new position. At the time of my promotion, I was 33 years old and had 10 years of investment and sales experience, including the sale of NASD licensed products, insurance, fixed annuities, and various other investments. I

also had successfully completed the NASD Series 6 Exam (Investment Company and Variable Contracts Products Representative) (1994), the NASD Series 7 Exam (General Securities Registered Representative) (2004), and the NASAA Series 63 Exam (Uniform Securities Exam) (1994). Moreover, I have been licensed by the State of Alabama to sell insurance and fixed annuity products since moving to the state in 2002, with previous insurance licenses held in the states California and Arizona.

13. In my capacity as Program Director I am responsible for coordinating the entire investment program. My duties include the following:

- Develop, design, market and implement Wealth Management growth initiatives;
- Develop and coordinate training related to Wealth Management, including training Licensed Bankers regarding the sale and marketing of insurance and fixed-rate annuity products, and training Financial Consultants/Team Leaders regarding the sale of insurance and fixed-rate annuity products and NASD licensed products, *e.g.*, stocks, bonds, mutual funds and variable annuities;
- Creation and implementation of expanded Licensed Banker program and training for Series 6 NASD investment products (mutual funds and variable annuities)
- Responsible for sales reporting, contest development and implementation to generate sales growth;
- Maintain and grow relationships with product providers;
- Direct supervision staff of Wealth Management employees;
- Negotiating new and existing selling agreements with product providers/vendors, including marketing support or “basis point contracts”;
- Coordination of Wealth Management’s partnership with UVEST Financial Services to provide clearance, settlement and custody services for Colonial customers;

- Coordination of communications with retail banks; and
- Coordination of new sales incentive plans for Licensed Bankers and Financial Consultants.

14. As Program Director, approximately sixty percent (60%) of my duties are dedicated to issues involving traditional equity investments, e.g., stocks, bonds, and mutual funds; approximately thirty to forty percent (30-40) of my duties are dedicated to issues involving fixed annuities; and approximately five percent (5%) of my duties are dedicated to issues regarding insurance. This is proportional to the amount of revenue that is generated for the investment company in each of these product lines.

15. The new structure of the Wealth Management division now provides a greater focus on the delivery of investment services to customers based on their specific investment needs through the united and cooperative effort of Licensed Bankers, Financial Consultants, retail and commercial banking partners, support staff and product specialists. Thus, the entire apparatus of the division, in conjunction with the complete apparatus of Colonial Bank, operates to create and further customer relationships and to support and deliver a total banking solution for customers based on a personalized financial strategy.

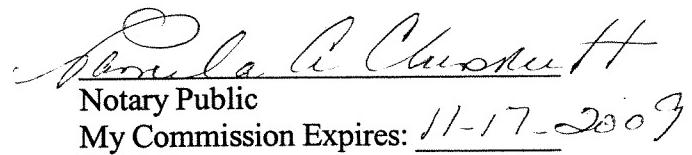
**FURTHER THE AFFIANT SAYETH NOT.**



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Sean Tesoro

**SWORN TO AND SUBSCRIBED BEFORE ME** on this the 8 day of Aug.  
2006.

(SEAL)



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Paula A. Chisnutt  
Notary Public  
My Commission Expires: 11-17-2009